

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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PAUL. J. McNALLY, TRUSTEE of the  
MASSACHUSETTS LABORERS' HEALTH AND  
WELFARE FUND and NEW ENGLAND  
LABORERS' TRAINING TRUST FUND; JAMES  
MERLONI, JR., TRUSTEE of the  
MASSACHUSETTS LABORERS' PENSION FUND  
and MASSACHUSETTS LEGAL SERVICES FUND;  
MARTIN F. WALSH, TRUSTEE of the  
MASSACHUSETTS LABORERS' ANNUITY FUND,

*Plaintiffs,*

C.A. No. 05-10072 JLT

vs.

G. CONWAY, INC.,

*Defendant,*

and

BOWDOIN CONSTRUCTION CORP.,

*Reach-and-Apply Defendant,*

and

FLEET BANK,

*Trustee.*

**ANSWER OF REACH-AND-APPLY DEFENDANT, BOWDOIN  
CONSTRUCTION CORP., TO AMENDED COMPLAINT**

1) The reach-and-apply defendant, Bowdoin Construction Corp. ("Bowdoin"), makes no response to the allegations of paragraph 1 of the Amended Complaint as they call for conclusions of law. To the extent that a further answer is required, Bowdoin denies the allegations of paragraph 1 of the Amended Complaint.

2) Bowdoin makes no response to the allegations of paragraph 2 of the complaint as they call for conclusions of law. To the extent that a further answer is required, Bowdoin denies the allegations of paragraph 2 of the Amended Complaint.

3) Bowdoin is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3 of the Amended Complaint and therefore denies same.

4) Bowdoin is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 of the Amended Complaint and therefore denies same.

5) Bowdoin is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 of the Amended Complaint and therefore denies same.

6) Bowdoin is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6 of the Amended Complaint and therefore denies same.

7) Bowdoin is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7 of the Amended Complaint and therefore denies same.

8) Bowdoin is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8 of the Amended Complaint and therefore denies same.

9) Bowdoin admits that G. Conway, Inc. has a place of business in Charlestown, Massachusetts and is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations of paragraph 9 of the Amended Complaint and therefore denies same.

10) Bowdoin admits the allegations of paragraph 10 of the Amended Complaint to the extent that it alleges that Bowdoin is a Massachusetts corporation with an address of 220-1 Reservoir Street, Needham Heights, Massachusetts and that Conway has subcontracted with Bowdoin on recent projects. As to the remaining allegations of paragraph 10 of the

Amended Complaint, Bowdoin makes no response as they call for conclusions of law. To the extent that a further answer is required, Bowdoin denies the remaining allegations of paragraph 10 of the Amended Complaint.

11) Bowdoin is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11 of the Amended Complaint and therefore denies same.

12) Bowdoin is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12 of the Amended Complaint and therefore denies same.

13) Bowdoin is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13 of the Amended Complaint and therefore denies same.

14) Bowdoin is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 14 of the Amended Complaint and therefore denies same.

15) Bowdoin restates its answers to the allegations of paragraph 1 through 14 of the Amended Complaint as if fully set forth herein.

16) Bowdoin is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16 of the Amended Complaint and therefore denies same.

17) Bowdoin is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17 of the Amended Complaint and therefore denies same.

18) Bowdoin is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 18 of the Amended Complaint and therefore denies same.

19) Bowdoin is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19 of the Amended Complaint and therefore denies same.

20) Bowdoin is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 20 of the Amended Complaint and therefore denies same.

21) Bowdoin is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 21 of the Amended Complaint and therefore denies same.

22) Bowdoin is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 22 of the Amended Complaint and therefore denies same.

23) Bowdoin is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 23 of the Amended Complaint and therefore denies same.

24) Bowdoin restates its answers to the allegations of paragraph 1 through 23 of the Amended Complaint as if fully set forth herein.

25) Bowdoin admits the allegations of paragraph 25 of the Amended Complaint to the extent that Conway has been working as a subcontractor to Bowdoin on recent projects. As to the remaining allegations of paragraph 25 of the Amended Complaint, Bowdoin makes no response as they call for conclusions of law. To the extent that a further answer is required, Bowdoin denies the remaining allegations of paragraph 25 of the Amended Complaint.

26) Bowdoin is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 26 of the Amended Complaint and therefore denies same.

27) Bowdoin makes no response to the allegations of paragraph 27 of the Amended Complaint as they call for conclusions of law. To the extent that a further answer is required, Bowdoin denies the remaining allegations of paragraph 27 of the Amended Complaint.

#### FIRST AFFIRMATIVE DEFENSE

The Amended Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Bowdoin has paid the defendant, G. Conway, Inc., in full accordance with the contract between them.

THIRD AFFIRMATIVE DEFENSE

Bowdoin owes nothing to the defendant, G. Conway, Inc.

FOURTH AFFIRMATIVE DEFENSE

The damages sustained by the plaintiff, if any, were caused by a person or persons for whose conduct this defendant is not responsible.

FIFTH AFFIRMATIVE DEFENSE


The plaintiff has not performed all conditions precedent to the maintenance of this action.

SIXTH AFFIRMATIVE DEFENSE

The contract between Bowdoin and G. Conway, Inc. contains an express condition precedent to the obligation of Bowdoin to make payment to G. Conway, Inc., viz., the receipt by Bowdoin of payment from the owner of the project that is subject of this action, and Bowdoin has not received such payment from the owner.

**WHEREFORE**, the reach-and-apply defendant, Bowdoin Construction Corp., prays that the Amended Complaint be dismissed and for its costs.

For the Reach-and-Apply Defendant,  
Bowdoin Construction Co., Inc.,  
By its attorneys,  
Law Offices of Warren H. Brodie, P.C.,

By: 

WARREN H. BRODIE  
40 Grove Street  
Wellesley, MA 02482  
(781) 235-1100  
BBO # 058000

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document was served upon all attorneys of record by mailing copies of same, postage prepaid, on April 28, 2005 to:

Gregory A. Geiman, Esq.  
Segal, Roitman & Coleman  
11 Beacon Street  
Suite #500  
Boston, MA 02108

  
WARREN H. BRODIE

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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**NOTICE OF FILING WITH CLERK'S OFFICE**

Notice is hereby given that the documents, exhibits or attachments listed below have been manually filed with the Court and are available in paper form only:

Answer of Reach-and-Apply Defendant, Bowdoin Construction Corp. to Amended Complaint.

The original documents are maintained in the case file in the Clerk's Office.

For the Reach-and-Apply Defendant,  
Bowdoin Construction Co., Inc.,  
By its attorneys,  
Law Offices of Warren H. Brodie, P.C.,

By: 

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